IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14069 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANWARKHAN NAWAZKHAN PATHAN - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SHIRISH JOSHI for Petitioner(s) : 1,
Shri HM Prachhak, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondents No. 1 and 3 to immediately take action against those responsible officers including respondent No.2 and to give them deterrent

punishment. By way of interim relief the petitioner has prayed for directing the respondents to pay to the petitioner a sum of Rs. 10 lakhs and more as compensation.

2. It is the contention on behalf of the petitioner that the petitioner was booked by the Police authorities and was arrested in connection with the case under the provisions of the TADA Act and also under the provisions of Section 25 of the Arms Act and ultimately the learned JMFC, Harij, had passed an order on 30th March 1994 discharging the petitioner as no case was made out against the petitioner and the said discharge was on the basis of the report submitted by Deputy Superintendent of Police, CBI. It is the contention on behalf of the petitioner that as the petitioner was falsely involved in the case by the respondent No.2 the respondents No. 1 and 3 should immediately take action against him.

3. It is required to be noted that whatever has been done by the respondent No.2 is during the course of his official duty and in connection with the alleged offences it was subsequently found that no case was made out against the petitioner and the petitioner came to be discharged. However, by itself it cannot be said that the respondent No.2 has acted malafide and with a dishonest intention and ulterior motive. Merely because some accused alleged to have

been involved in a case came to be discharged, it cannot be said that a Police Officer has acted malafide with dishonest intention and ulterior motive, unless it is specifically found on evidence that in fact the said officer has acted malafide and has falsely implicated that person. In other words, merely because the petitioner came to be discharged by the competent Court, it cannot be said that the respondent No.2 has acted malafide with a dishonest intention and ulterior motive.

4. In the facts and circumstances of the case, there is no substance in the present Special Civil Application and the same is required to be dismissed. However, it is observed that if the petitioner is of the opinion that he is required to be compensated in terms of money, then certainly he can approach a competent Court for getting compensation and if the petitioner so does, on appreciation of evidence if it is proved that the action of the respondent No.2 was malafide and the petitioner has actually suffered some loss, appropriate order may be passed by the Civil Court. However in this petition under Article 226 of the Constitution of India, no relief can be granted. The present Special Civil Application is therefore dismissed. Rule is discharged.

Rmr. *[M.R. Shah, J.]*